NOTES OF CASES.

Taxation—Classification—Burden on Interstate Commerce—Virginia Act Held Valid.—On March 4, the United States Supreme Court in Armour *v.* Commonwealth, 38 Sup. Ct. Rep. 267, affirmed the judgment of the Virginia Supreme Court of Appeals which had held valid a section of the general Tax Bill covering a tax on merchants (118 Va. 242, 87 S. E. 610). The statute in question (§ 45, Acts 1902-04, cl. 148, as amended by Acts 1915. Va. Code, vol. 4, p. 594), directs that for the purpose of fixing the amount of the tax it shall be based upon the amount of the purchases made during the period for which the license is granted, and that goods manufactured by a merchant and offered for sale by him shall be considered as purchases but that goods of manufacturers taxed on capital and offered for sale at the place of manufacture shall not be construed as within the act.

The clause which makes such goods the same as goods purchased was inserted in the amendment of 1915 for the purpose of overcoming the decision in Morris *v.* Commonwealth, 116 Va. 912, 83 S. E. 408, wherein it was decided that under the original law no merchant's tax was required of a manufacturer resident or nonresident for the sale of articles manufactured by him.

The plaintiff refused to make the return of the amount of its purchases as required by the act and brought suit to enjoin its enforcement "so far as it required the inclusion in the amount of purchases of merchandise manufactured by the corporation in other states and shipped into Virginia for sale. It was charged that to the extent stated the statute was in conflict with the Constitution of the United States because of the provision excluding from liability for license persons who manufactured merchandise in Virginia and sold the same at the place of manufacture for the following reasons: (a) Because as the result of such exclusion the statute discriminated against the company to the extent that it shipped goods manufactured by it into Virginia to be sold and therefore was a direct burden on interstate commerce; (b) because the statute deprived manufacturers in other states of the benefit of section 2 of article 4 guaranteeing to the citizens of each state 'all privileges and immunities of citizens in the several states;' and (3) because the statute in the respects stated was repugnant to the equal protection and privilege and immunities clauses of the Fourteenth Amendment."

In answer to these three contentions the court says:

"In the first place we are of opinion that the distinction upon which the classification in the statute rests between a manufacturer selling goods by him made at their place of manufacture and one engaged as a merchant in whole or in part in selling goods of his

manufacture at a place of business other than where they were made is so obvious as to require nothing but a mere statement of the two classes. All questions concerning the equal protection clause of the Fourteenth Amendment may therefore be put out of view.

"In the second place, [as by the Virginia Court of Appeals it was decided that the act was not discriminatory since the exclusion from the license tax of manufacturers selling at their place of manufacture was open to all whether noncitizens or even nonresidents who manufactured in Virginia and because the liability for the merchant's license embraced even those who manufactured in Virginia if they sold as merchants the goods by them manufactured at a place other than the place of manufacture] we are also of opinion that the interpretation given by the court below to the statute excludes all basis for the contention that the provision of the statute imposing the license tax upon the one class and not upon the other gave rise to such discrimination as resulted in a direct burden upon interstate commerce. And this whether the statute be considered from the point of view of the power of the state to enact it inherently considered, or of the power as tested by the necessary operation and effect of the statute, if any, upon interstate commerce and the plenary and exclusive power of Congress to regulate the same.

"In the third place we also conclude that as the subject-matter of the statute was plainly within the legislative authority of the state and as the previous conclusions exclude the conception of the repugnancy of the statute to the provisions of the Constitution just considered, it necessarily follows that there is no ground for the assertion that the statute conflicted with the privileges and immunities clause of article 4 of the Constitution or of the clause in the Fourteenth Amendment providing that:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Further considering the question of the tax being a burden on interstate commerce because goods manufactured in another state were subjected to the tax while similar goods manufactured in Virginia were not, the court concludes: "if the asserted disadvantage be real and not imaginary, it would be one not direct because not arising from the operation and effect of the statute, but indirect as a mere consequence of the situation of the persons and property affected and of the nondiscriminating exercise by the state of power which it had a right to exert without violating the Constitution—which is indeed but to say that the disadvantage relied upon, if any, is but the indirect result of our dual system of government.

"In other words, to resume, the error of the argument results from confounding the direct burden necessarily arising from a statute which is unconstitutional because it exercises a power concerning interstate commerce not possessed or because of the unlawful dis-

criminations which its provisions express or by operation necessarily bring about and the indirect and wholly negligible influence on interstate commerce, even if in some aspects detrimental, arising from a statute which there was power to enact and in which there was an absence of all discrimination, whether express or implied as the result of the necessary operation and effect of its provisions. The distinction between the two has been enforced from the beginning as vital to the perpetuation of our constitutional system. Indeed, as correctly pointed out by the court below, that principle as applied in adjudged cases is here directly applicable and authoritatively controlling. New York *v.* Roberts, 171 U. S. 658, 19 Sup. Ct. 58, 43 L. Ed. 323; Reymann Brewing Co., 179 U. S. 445, 21 Sup. Ct. 201, 45 L. Ed. 269."

Interstate Commerce—Regulation of Operation of Trains.—The Supreme Court of the United States in Missouri, K. & T. R'y of Texas *v.* State of Texas, 38 Sup. Ct. R. 178, held that an order of a state railroad commission requiring passenger trains to start from their point of origin and from stations on the line in accordance with the advertised schedule, with certain allowances for connections with trains on other lines, was an unlawful interference with interstate commerce as applied to an interstate train received by defendant from a connecting line at a point near the state line and coming into defendant's hands too late for compliance with the schedule, as compliance with the order could not be secured, by running an extra train if the regular one was not on time, it appearing that defendant had a right to advertise the interstate train, and offering another train would not free itself from liability. The court said:

"This is a suit brought by the State of Texas to recover penalties for violation of an order of the State Railroad Commission. This order required passenger trains in Texas to start from their point of origin and from stations on the line in accordance with advertised schedule, allowing them not exceeding thirty minutes at origin or points of junction with other lines to make connection with trains on such other lines, and not exceeding ten minutes more if at the end of the thirty minutes the connecting trains were in sight. There were some other qualifications not necessary to be stated. The defendant's passenger trains concerned were numbers 9 and 209, and were parts of a train also numbered 9, of the Missouri, Kansas & Texas Railway, a different corporation, taken charge of by the defendant at Denison, Texas, about five miles south of the Texas and Oklahoma State line, under a contract with the Missouri, Kansas & Texas. In pursuance of this contract they were forwarded via Dallas and Fort Worth to Hillsboro; thence as one train to Granger, and there again divided, the two parts going respectively to Galveston and San Antonio. There were similar arrangements for trains